IN THE HIGH COURT OF JUDICATURE,ANDHRA PRADESH AT HYDERABAD.

MONDAY THE EIGHTH DAY OF NOVEMBER,

TWO THOUSAND FOUR.

PRESENT:

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Writ Petition No. 11783 of 2004

Between:

Jigesh Thampan,s/o T.U.Thampan,

Aged about 24 Yrs. Unemployee,

Peechampally House,

Padivattom,Edapalli post,

Ernakulam, Kerala, presently

R/o Sainikpuri, Hyderabad ..Petititoner

And:

Marine Products Export Development Authority,

Quality Control Lab. Represented by its

Deputy Director, J.P.Road, Bhimavaram-2, Andhra Pradesh

….Respondent.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ or order or direction especially one in the nature of Writ of Mandamus (i) for declaring the action of the respondent in not permitting the petitioner to compete along with the candidates sponsored through the Employment Exchange, as illegal, arbitrary, violative of Principles of natural Justice as per the law laid down by Hon'ble Supreme Court in Malakapatnam's case; and (ii) Consequently, to direct the

respondent to consider the case of petitioner for appointment to the post of Laboratory Assistant, along with the candidates sponsored through the Employment Exchange, and appoint the petitioner, if he is selected.

Counsel for the Petitioner : Sri K.Vasudeva Reddy

Counsel for the Respondent : Sri Ch.; Dhanamjaya.

The Court made the following :

Order:-

The petitioner seeks to issue a Writ or order or direction, especially one in the nature of Writ of Mandamus (i) for declaring the action of the respondent in not permitting the petitioner to compete along with the candidates sponsored through the Employment Exchange, as illegal, arbitrary, violative of Principles of natural Justice as per the law laid down by Hon'ble Supreme Court in Malakapatnam's case; and (b) consequently, to direct the respondent to consider the case of petitioner for appointment to the post of Laboratory Assistant, along with the candidates sponsored through the Employment Exchange, and appoint the petitioner, if he is selected.

It is stated that the petitioner is a B.Sc. candidate with Chemistry as his main subject. Under the Marine Products Export Development Authority Act, 1972(Act 13 of 1972) the petitioner was appointed and worked as Lab. Trainee in Marine Exports Development Authority Lab at Kochi for 179 days and presently he is an unemployee. The respondent is an autonomous body established and is controlled by the Government of India spread over in almost all the states including Andhra

Pradesh. In Andhra Pradesh the respondent has got laboratory one at Nellore and another at Bhimavaram . Four posts of Lab Assistants are vacant at Bhimavaram. The respondent-Organisation has sent a requisition to the Employment Exchange, West Godavari, Eluru to sponsor the names of eligible candidates to fill up the existing vacant posts of Lab Assistants in MPEDA , Bhimavaram and the Employment Exchange furnished the list of candidates. It is not the case of the petitioner that there are no candidates available to be sponsored by the employment exchange and requiring it to be published in a news paper calling for applications. It is the case of the petitioner that the respondent -organization sent requisition to the employment exchange to sponsor the names of the candidates to fill up the vacancies of four Lab Assistants a t Bheemavaram. The Employment Exchange furnished the list of candidates and the process of selection is on and the respondent is contemplating to complete selections in the next week. The petitioner came to know of the existing vacancies and approached the respondent to consider him for the post of Lab. Assistant as he is having requisite qualifications. As the respondent did not permit him directly to apply, the present writ petition is filed on 9-7-2004. While admitting the writ petition, this Court granted interim direction allowing the petitioner to appear for the interview of Lab Assistants along with the candidates sponsored by the employment exchange.

It is the contention of the learned Counsel for the petitioner that in the absence of any statutory rule restricting them to select the candidates sponsored by the employment exchange, outside candidates are also entitled to apply for the said posts. As the petitioner is also qualified and got experience he is also entitled to apply and to be considered on par with other candidates sponsored by the employment Exchange as held by the Supreme Court in **EXCISE SUPERINTENDENT, MALKAPATNAM, KRISHANA DISTRICT VS. K.B.N. VISWESHWARA RAO AND OTHERS** [1]. He further cited a decision in **ARUN TIWARI AND OTHERS V. ZILA MANSAVI SHIKSHAK SANGH AND OTHERS**[2] to the effect that in the absence of any specific rule restricting to the candidates sponsored by employment exchange, the other candidates are also entitled to appear and to be considered. It is further held by the Apex Court, that the better course for the state would be to interview the employment exchange candidates and also the other candidates applied in response to the advertisement in the news paper and Radio etc. and to consider the cases of competent candidates who

applied in response to the advertisement.

On the other hand, the learned counsel appearing for the respondent submits that admittedly the candidates have to be called for specifically from the Employment Exchange for filling up the post of Lab Assistants falling under Group C . This was specifically mentioned in instruction no. 8 under the caption Method of recruitment. Sub- Clause (c) and(d) of Instruction no. 8 reads as follows:

> " (c) All vacancies in posts, the maximum of the scale of pay of which is not less than Rs.900/- which are to be filled by direct recruitment, shall be advertised on all – India basis and filled from amongst the applicants.
>
> (d) all other vacancies shall be notified to the Regional Employment Exchange and also advertised in the locality where the vacancy occurs and filled from amongst the applicants and from amongst persons sponsored by the Exchange."

As per the amendment to the instructions, the non technical posts falling under Group(c) and (d) are to be filled by direct recruitment from candidates sponsored from Employment Exchange situated in the regions only and need not be advertised. If the Employment Exchange fail to sponsor qualified candidates then only the appointing authority shall advertise the posts in news paper and fill up the vacancies.. The posts of Lab assistants are non-technical posts falling under group (c) of Instruction no. 8 . So there is no need to advertise in news paper and call for applications. It is not the case of the petitioner that the Employment Exchange could not sponsor qualified candidates for the notified vacancies. Even according to the petitioner, Employment Exchange sponsored candidates and they are going to be interviewed shortly. The case of the petitioner is not considered though applied directly as he was not sponsored by Employment Exchange. Obviously, the name of the petitioner could not be sponsored through Employment Exchange, as he belongs to Kerala. Posts are sought to be filled from the candidates sponsored from the Regional Employment Exchange, West Godavari , Eluru only and the employment Exchange sponsored candidates. Just before the finalization of the names of the candidates the petitioner wanted to consider his case also pursuant to the interim directions of this Court.

The Learned counsel for the respondent submits that the application of the petitioner could not be considered as his name is not sponsored by the Regional Employment Exchange as he belongs to Kerala state and the posts of Lab assistants have to be filled by local candidates. As per standing instructions issued in Instruction no. 8(c) and (d) the respondents are entitled to fill up the Lab assistants with the candidates sponsored by regional employment exchange.

A division Bench of this Court in **CHIEF MANAGER, PERSONNEL AND HRD SECTION, STATE BANK OF INDIA V. K.LAKSHMAMMA AND ANOTHER**[3] while considering the relevant case laws on the subject this Court held that the writ of mandamus does not lie compelling the employer to act contrary to law. So this Court in exercise of jurisdiction cannot issue a writ or order or direction to the State or to employers to violate law . It held as follows:-

> "It has become a common practice to invoke the jurisdiction of this Court under Article 226 of the Constitution of India seeking directions as against the employer to consider the application filed on one's own accord for employment along with the applications of the candidates sponsored by the Employment Exchange. The grant of such directions would confer a benefit on an individual without even ascertaining as to who are waiting in the rolls of Employment Exchange and since what period. By one stroke this Court cannot equate the candidates knocking the doors of this Court at the last minute asking for such relief with the candidates who are waiting in the queue in the Employment Exchange for years together. Such directions may result in treating the unequals as equals. It amounts to permitting such candidates to have a steal over their unsuspecting rivals. It may amount to creating a special class whose cases are required to be considered for selection and appointment along with the candidates sponsored by the Employment Exchange without any due regard to the seniority of registration. If such a situation is allowed to continue, it may ultimately result in creating and constituting a favoured class. The same would be an anathema to Article 14 of the Constitution of India. "

The Division Bench further held as follows:

> "As per the Judgment of the Apex Court if there are rules or regulations providing for recruitment only from out of the candidates sponsored by the Employment Exchange, the employer is not required to issue any notification inviting applications and get the same published in the news papers and consider those applications along with the candidates sponsored by the Employment Exchange. In the absence of any such rule or regulation, the employer is bound to invite applications from the interested candidates and follow a fair and transparent procedure satisfying the requirements of Articles 14 and 16 of the Constitution of

India.”

From the above it is seen that the instructions clearly lay down that the posts are to be filled by the candidates sponsored by employment exchange only . So I am of the opinion that the petitioner is not entitled for any relief in this writ petition as his prayer is to consider his case along with the candidates sponsored by the Employment Exchange by the appointing authority for the posts of Lab Assistants. Hence the writ petition is devoid of merits and deserves to be dismissed.

In the result the writ petition is dismissed without costs. The interim order granted at the time of admission stands vacated.

Sd.

(V.ESWARAIAH)

08-11-2004

To

The Deputy Director,

Marine Products Export Development Authority, Quality Control Lab, J.P.Road,

Bhimavaram-2

2 C.Ds.

Tsvk

WPMP NO.18001 OF 2004

IN

Writ Petition No. 24989 of 2002

Order:-

It is stated that pursuant to the interim directions granted by this Court in WPMP No. 23855 of 2003 dated 22-10-2004 directed the respondents 1 to 3 herein to pay salary and arrears of salary, which the petitioner is entitled consequent upon his reinstatement as Junior Assistant i n Sri Talupulamma Ammavari temlple, Chinnavola, East Godavari District. It is stated that the petitioner is entitled to a sum of Rs.26,210/- upto May,2002. It is represented that in compliance to the directions issued an amount of Rs.15,000/- was only paid to the petitioner. Therefore, the petitioner is constrained to file this present W.P.M..P. to direct the respondents to pay arrears of salary from June, 2002 onwards. The respondents so far neither filed a petition to vacate the interim direction granted by this Court on 22-20-2003 in WPMP nor filed any counter for modification of the order passed earlier.

So, the respondents are directed to pay salary and arrears of salary payable to the petitioner from June 2002 onwards within a period of three weeks from the date of this order.

(V. ESWARAIAH)

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